

Chapter 42 - Contract Administration and Audit Services

Section 42.1 Contracting Officer's Representatives

42.1.1 PURPOSE

This section has three major goals:

- A) To implement the requirements of the Acquisition Workforce Provisions of the ClingerCohen Act and the Office of Federal Procurement Policy Letter 97-01 as they relate to employees, regardless of their General Schedule series, who performing acquisition-related duties on behalf of the Agency.
- B) To standardize titles used at EPA for employees who perform acquisition duties to conform with the title used throughout the Federal Government, i.e., Contracting Officer Representative (COR), and to avoid confusion with titles used for employees who manage assistance agreements. The new standard for titles will be to list the instrument the COR will manage plus the generic term ACOR. @ For example, a COR managing a delivery order is a delivery order COR. This new protocol will be used throughout this section.
- C) To establish the responsibilities and limitations of employees responsible, directly or indirectly, for pre-award or post-award duties under Agency acquisitions.

42.1.2 BACKGROUND

This document was originally issued as Contracts Management Manual Chapter 7.

42.1.3 AUTHORITY/APPLICABILITY

- A) This section is applicable to individuals who perform acquisition functions on behalf of the Agency, such as CORs on contracts, and their supervisors.
- B) When the CO determines it to be in the Agency's best interest, this section shall apply to individuals appointed as CORs on simplified acquisition purchase orders or orders placed under General Services Administration Multiple Award Schedule Contracts, Governmentwide Acquisition Contracts, and Multi-Agency Contracts.
- C) The Director, Office of Acquisition Management (OAM), or her designated representative, may waive the requirements of this section in part or in its entirety. The justification and approval for any waiver shall be documented in writing by the originator of the waiver request.

- D) Guidance concerning employees appointed as contracting officers, including ordering officers and duly-appointed On-Scene Coordinators exercising their procurement warrant authority, can be found in Chapter 1, Section 1.2 of this manual. In most instances, OnScene Coordinators serve as CORs in accessing contractor resources.
- E) For all interagency agreements having contractual services valued over \$100,000 indicated in the budget category, or amended to have contractual services valued over \$100,000, EPA employees shall not perform any of the COR duties listed in this section, unless given a written delegation of authority as a COR. EPA employees shall not be appointed as CORs until they have completed the required training. EPA employees appointed under an IAG as CORs on another agency's contract, and in existence on the effective date of this policy, shall complete the COR training required in this section within one year of the effective date of this policy.

42.1.4 DEFINITIONS (RESERVED)

42.1.5 POLICY

42.1.5.1 Description of Functions

- A) Contracting Officer (CO). Ultimately, the CO is responsible for the administration of his or her contract. COs have the authority to enter into, administer, or terminate contracts and to make related determinations and findings on behalf of the Agency. The Federal Acquisition Regulation (FAR), specifies the CO is responsible for ensuring performance of all necessary actions for effective contracting, ensuring compliance with the terms of the contract, and safeguarding the interest of the United States in its contractual relationships. Furthermore, the FAR states, the Contracting Officer must have the authority to the maximum extent practicable and consistent with law, to determine the application of rules, regulations, and policies, on a specific contract. In undertaking this effort, many COs rely on the contribution of numerous financial, legal, and technical experts to assist them.

The definition of the CO contained in FAR 2.101 includes certain authorized representatives of the CO acting within their authority. Due to the size and complexity of Agency acquisitions, COs frequently appoint qualified individuals to perform certain contract administration activities. The Government-wide term for these individuals is a Contracting Officer's Representative, abbreviated as ACOR.

B) The COR (in General).

- 1) A COR is the authorized representative of a contracting officer. A COR may be either an EPA employee or another Federal agency, nominated by the program office and appointed by the CO, who possesses the necessary knowledge, skills, and abilities to

appointed by the CO, who possesses the necessary knowledge, skills, and abilities to perform the COR duties.

- 2) The Federal Acquisition Institute (FAI) was tasked in the Acquisition Workforce Provisions of the Clinger-Cohen Act and the Office of Federal Procurement Policy Letter 97-01 with identifying COR duties. These duties are listed in the COR Workbook which is available at <http://www.fai.gov/pdfs/corbluebook.pdf>. Additionally, the duties, along with Agency-specific information, are also listed in Appendices 42.1A or 42.1B of this section. Generally, these duties include preparing acquisition requirements, participating in contractor selection, providing technical direction, monitoring contract performance, and so forth.
- 3) Over the years, EPA has developed a wide range of Agency-unique titles for employees who perform COR duties, such a project officer, work assignment manager, delivery order project officer, task order project officer, task monitor, and so forth. Regardless of the title or their varying roles, all these individuals are CORs. The basic differences, which will be discussed later in this section, center on the acquisition instrument the COR manages, whether it is a basic contract, a work assignment, task order or delivery order.
- 4) COR duties are inherently governmental functions. For this reason, CORs must be qualified Federal Government employees. Senior Environmental Enrollees (SEE) cannot function as CORs.
- 5) CO appointment of a COR does not grant authority to enter into contractual agreements or amendments. CORs may perform only those functions delegated to them, and must not take any action reserved for the CO, such as:
 - a) Promise or authorize the contractor to perform work that is additional to or outside the scope of the contract, work assignment, delivery or task order, etc.;
 - b) Conduct negotiations or bind the Government by making any written or oral agreements with contractors;
 - c) Directly or indirectly change the following:

S	Pricing, cost or fee;
Scope of the acquisition (contract, purchase order, work assignment, delivery or task order, etc.); Delivery schedule or period of performance;	
-□	Labor mix or level of effort; or Any terms or conditions of the acquisition.
-□	
-□	
-□	

- d) Redelegate or reassign their COR authority;
- e) Authorize Government-furnished property, or its disposition; or f)

Direct the contractor to start work or issue stop work orders.

C) Standards of Conduct as They Apply to CORs

1) All Government employees must follow the Standards of Ethical Conduct for Employees of the Executive Branch, codified in 5 C.F.R. Part 2635 (1/1/99 Edition) as amended at 64 FR 2421-2422 (Jan. 14, 1999) and 64 FR 13063-13064 (Mar. 17, 1999). A copy of this document is available at the United States Office of Government Ethics Internet site,

<http://www.usoge.gov>.

2) Since their duties involve the exercise of discretion in the sensitive area of acquisition, all CORs must file Office of Government Ethics Form 450, Confidential Financial Disclosure Report, with their respective organization's designated ethics official. A list of Agency ethics officials is available on the Agency Intranet at

<http://intranet.epa.gov/ogc/ethics.htm>. In accordance with 5 C.F.R 2638.704, employees, such as CORs, who are required to complete Form 450 must be given ethics training each calendar year. Providing this training is the responsibility of the COR's organization.

3) Because of past problems and the sensitivity of this area, OAM recommends that Agency organizations emphasize standards of conduct, laws, and regulations related to conflicts of interest, as it relates to Government-contractor relations in their ethics training. These laws and regulations define what is considered to present a conflict (incompatibility), or an appearance of a conflict, between Government employees' official duties and their outside financial interests and affiliations (as well as certain financial interests of their spouse, minor or dependent children, outside employers and other entities). Also covered in the concept of "conflict of interest" are matters such as receipt of gifts, outside activities, impartiality, and seeking non-Federal employment.

4) Financial conflicts are not the only situations where impartiality may be questioned. A COR's objectivity may also be affected by a personal relationship with a contractor employee. Because of this, CORs must recognize that establishing or maintaining a personal relationship with a contractor employee could raise concerns about the COR's objectivity in performing their duties. In cases where CORs have personal relationships with contractor employees, the OAM strongly encourages CORs to seek the guidance of their Ethics Official, in determining if the situation is or might appear to be a conflict of interest. By reviewing the situation with their Ethics Official, any concerns can be addressed and resolved in a manner that protects both the employees' and the

Government's interests.

- 5) In addition to the Standards of Conduct referenced above, CORs must also comply with the contractual regulations applicable to relationships between Government personnel and contractor employees found in the Federal Acquisition Regulation (FAR) 3.101 and 9.5, and the EPA Acquisition Regulation (EPAAR) 1509.5.

a) FAR 3.101 reiterates that Government business must be conducted in a manner above reproach with complete impartiality and without preferential treatment. Transactions relating to the expenditure of public funds require the highest degree of public trust and an impeccable standard of conduct. The general rule is to avoid strictly any conflict of interest or even the appearance of a conflict of interest in Government-contractor relationships.

b) A relationship between a Government employee and a contractor employee could also raise concerns under FAR 9.5, Organizational Conflicts of Interest, and applicable EPA acquisition regulations and contract clauses, including EPAAR 1552.209-71 and 1552.209-73, which deal with organizational and contractor employee personal conflicts of interest, respectively. Such concerns could exist, for example, if the relationship affects, or potentially affects, the ability of the contractor to render impartial advice or assistance to the Government, or impairs the objectivity of the contractor employee in performing the contract work. If a COR is involved in, discovers, or otherwise learns of a situation that raises such conflict of interest concerns, he or she must consult with the CO. It is the CO's responsibility to review the situation and determine what action could be taken to avoid, neutralize, or mitigate the conflict of interest or potential conflict of interest.

D) Contract-Level CORs.

- 1) Traditionally, EPA has a multi-tiered structure for CORs. The title Aproject officer, @ abbreviated as APO, @ was used to denote the CO's primary representative on a basic contract. In this section the PO becomes the contract-level COR. As the CO's primary representative, the contract-level COR usually oversees the delivery order, task order, or work assignment CORs described in the next section of this section. In some cases the contract-level COR may be responsible for both pre-award and postaward contract functions. Appendix 42.1A to this section lists the duties a contractlevel COR may perform if delegated by the CO.
- 2) Assistance agreements also have POs. This role is unique from that of the contract PO or contract-level COR. Questions concerning the training requirements and the duties of assistance agreement POs should be referred to the Office of Grants and

Debarment (OGD). Information about OGD PO training is available on the Agency Intranet at:

http://intranet.epa.gov/oinijhkh/project_officer_training.htm.

- 3) For contracts which cover multiple Agency organizations or geographical locations, the CO may appoint a contract-level COR to administer the basic contract for each location (such as a region, laboratory, etc.) or for a combination of locations, such as a contract zone. An example of such an arrangement, with contract-level CORs for regions and a zone, is contained in Office of Solid Waste and Emergency Response Directive 9972.00. Whenever this arrangement is used, the CO must stipulate the relationship between the contract-level CORs in the COR Appointment Memorandum.
- 4) Due to the complexity and high dollar value of most Agency contracts, the contract-level COR function is extensive and complex. Contract-level CORs usually monitor the overall contract and oversee the work of CORs who are managing work ordered under the contract. For this reason, it is crucial that contract-level CORs be employees in good standing who have the requisite knowledge, skills, and abilities to perform their role and assist other CORs.
 - a) If a contract-level COR's function will involve managing the overall contract and day-to-day contractor oversight will be performed by work assignment, delivery or task order CORs, then the contract-level COR need not possess specialized technical expertise in science, engineering, etc.
 - b) If the basic contract does not have a separate tasking mechanism (e.g., work assignments, delivery or task orders), or, if the contract-level COR will manage any orders under the contract himself, then the contract-level COR must possess the technical expertise to perform this function.
 - c) Contract-level CORs, particularly those without specialized technical expertise, may seek the advice of their work assignment, delivery or task order CORs, or other Government professionals when needed to resolve contract issues. However, contract-level CORs must be mindful that COR duties are inherently governmental functions and decisions must not be made by contractors or parties outside the Government.
- 5) Contract-level CORs must have six months contract management experience in any one of the following: (i) serving as a COR on a delivery order, task order, or work assignment, (ii) having GS-1102 experience, (iii) serving as a COR at another Federal agency, or (iv) mentoring with an experienced COR.

E) Other Types of CORs.

1) The CORs listed in this section are generally involved in post-award activities, overseeing a specific portion of work ordered under a contract. In addition to Agency contracts, they may also function under certain simplified acquisitions involving complex requirements or orders placed under General Services Administration (GSA) Multiple Award Schedule (MAS) contracts, Governmentwide Acquisition Contracts (GWACs), or Multi-Agency contracts (MAC). Appendix 42.1B to this section delineates duties the CORs listed below may perform. Usually, the delivery order, task order or work assignment COR works with the contract-level COR.

- a) Delivery Order COR - A COR appointed to an indefinite-delivery type contract or other acquisition instrument where contractor **supplies** are ordered through separately funded A delivery orders@ awarded by the CO. This term includes CORs functioning on orders for supplies under GSA MAS contracts, GWACs, and MACs.
- b) Simplified Acquisition COR - A COR appointed to simplified acquisitions for either supplies or services. Typically, simplified acquisitions do not require a COR. However, for complex requirements, the CO may determine that it is in the Government's interest to appoint a COR. In this case the individual appointed as a COR must meet the requirements of this section.
- c) Task Order COR - A COR appointed to an indefinite-delivery type contract or other acquisition instrument where contractor **tasks or services** are ordered through separately funded A task orders@ awarded by the CO. This term includes CORs functioning on orders for services under GSA MAS contracts, GWACs, and MACs.
- d) Work Assignment COR - A COR appointed to a **cost-reimbursement type contract** where contractor **services** are ordered through A work assignments@ issued by the CO. In contrast to a task order, a work assignment is not a separately funded document.

2) CORs listed in paragraphs (1) through (4) must be technically proficient in the work the contractor is performing. Being A technically proficient@ means, for example, having sufficient knowledge and experience to review deliverables, understand the labor categories involved in the work, and the amount of hours needed to complete the work. OAM recommends these CORs receive on-the-job mentoring from experienced CORs before monitoring an order on their own.

F) Alternate Contracting Officer's Representative.

- 1) Only a CO can appoint CORs. CORs cannot redelegate or assign their acquisition duties to another person. Also, one COR cannot sign for another COR since the COR's authority is contract-specific. The CO can appoint an alternate COR to act in the absence of the COR, such as when the COR is on leave or travel. The training and experience requirements for the alternate COR are identical to those of the COR, e.g., an alternate contract-level COR must meet all the training and experience requirements established in this Section for the contract-level COR.
- 2) Office of the Comptroller Transmittal Number 89-13, dated February 02, 1989, allowed CORs to designate an alternate for the purpose of signing invoices. The policy also allowed supervisors to approve invoices in the absence of the COR. The Office of the Chief Financial Officer will rescind this policy effective January 02, 2003. After that date, to ensure that the Agency meets the 30-day turnaround period on invoice approval, the program office must nominate and the CO must appoint an alternate COR for each basic contract, delivery or task order.
- 3) The COR's supervisor does not have the authority to fill-in for the COR, to perform COR duties, to oversee, or to direct the contractor. Only a COR who is appointed by the cognizant contract CO may perform these functions.

42.1.5.2 Required Training

A) The Office of Acquisition Management is responsible for determining the mandatory training requirements for CORs. For their basic training, CORs may choose between two courses: FAI's on-line COR Mentor Program or OAM's COR Training Course. Every three years after completing one of these courses, CORs must complete OAM's Recertification Course. Employees who are not current in their training requirements cannot serve as CORs. The following discusses each course in more detail.

- 1) FAI's COR Mentor Program. The Internet-based COR Mentor Program was developed by FAI to cover the critical competencies, duties, and tasks of Federal Government CORs. This course consists of 18 modules covering each COR duty. FAI estimates it will take 24 hours to complete the course. Since the course is taken individually on the Internet, students may complete the course at any pace which feels comfortable, e.g., one module a day, etc. Students may enroll at any time by following the registration procedures described at <http://www.faionline.com>. This is a one-time only requirement. There is no individual charge for taking the course.

- 2) OAM's COR Training Course. OAM's three-day COR Training Course, formerly Contracts

COR duties and Agency-specific policies and procedures related to administering contracts. The course provides hands-on practical application and problem solving analysis of COR duties and is given in a facilitated, group exercise format.

- 3) OAM's Recertification Course is taught by Agency staff. It covers the most recent issues and problem areas in acquisition. All CORs must take the oneday Recertification Course every three years after completing the COR Mentor Program or the COR Training Course.

42.1.5.3 Recommended Training and Mentoring

A) Contract Administration for Supervisors Course is highly recommended. Supervisors play a critical role in overseeing the performance of Agency CORs. To assist them with this job, OAM has developed a half-day Contract Administration for Supervisors Course. This course helps supervisors understand the requisite duties and responsibilities of the COR as they pertain to the numerous Federal and EPA regulations and policy directives governing contracts. It also focuses on problem areas (e.g., personal services, inherently governmental functions, recent General Accounting Office and Office of Inspector General audit findings).

B) Mentoring. FAI and OAM courses are designed to assist the student in gaining basic knowledge and skills in contracting fundamentals. Attending a course alone is not enough to ensure a transfer of learning into performance results. Supervisors and other program office staff can help by encouraging CORs to practice new skills and providing specific feedback. As part of their mandate, the FAI developed the COR Workbook to help CORs apply and reinforce skills learned in class through on-the-job assignments. (The Workbook can be downloaded from the Internet at <http://www.fai.gov/pdfs/corbluebook.pdf>). For each COR area of responsibility (duty), FAI has listed detailed steps for accomplishing that duty. A mentor, such as a supervisor, team leader, or more senior COR, may assign these on-the-job tasks, oversee, evaluate, and document a new COR's performance. This mentoring process also allows program offices to familiarize CORs with office-specific policies and procedures. OAM highly recommends that all new CORs be mentored.

42.1.5.4 Course Scheduling

A) The Acquisition Policy and Training Service Center (APTSC) within OAM is responsible for scheduling and presenting OAM acquisition training courses, as well as maintaining a data base of all Agency employees who have completed OAM acquisition training courses within the past five years. Organizations interested in scheduling the required or specialized acquisition courses should contact the Manager of APTSC for course availability and additional details.

- B) APTSC publishes the latest Agency wide acquisition training schedule on the Agency Intranet at <http://intranet.epa.gov/oamintra/training/index.htm>.

42.1.5.5 Deferment of Training Requirements

- A) If unforeseen circumstances require the immediate appointment or retention of a COR who is not current in his or her training, the COR's immediate supervisor may request a deferment of the required course. The request must be in writing to the APTSC Manager and must be routed through the respective CO for concurrence. The deferment request must address:

- 1) the nominee's experience in contract administration,
- 2) the acquisition training the nominee has completed to date,
- 3) why there is an immediate need to appoint or retain a COR, and 4)
plans to fulfill the training requirement.

- B) The CO will review the request. If the CO agrees to deferring the training requirement, he or she will indicate concurrence and forward the request to the ATSC Manager for review and approval. Deferments of training will only be granted for a limited period until training can be completed.

42.1.5.6 Nomination and Appointment of CORs

- A) The first step in the appointment process is for the potential COR's immediate supervisor to recommend a candidate by submitting EPA Form 1900-65, Nomination of the Contracting Officer's Representatives (Appendix 42.1C to this section), to the CO. When appointing a COR, the CO shall consider the requirements of this section as well as the complexity and dollar value of the acquisition. The CO will respond to the nomination in writing by either appointing the nominee as a COR or stating why the nominee was not appointed.

- B) When nominating an employee from another Federal agency as a COR, the nominating official shall be the EPA program office manager who will be responsible and accountable for overseeing the nominee's performance. CORs who work for other agencies must:

- 1) Complete the training required by this section;
- 2) Have an OGE Form 450 on file with their respective agency; and 3)

Comply with EPA contract policy and procedures.

- C) The supervisor need only submit one 1900-65 per COR under the contract. Once a COR is appointed under a specific contract, there is no need to submit additional forms for each work assignment, delivery order, or task order under that contract.
- D) If the nominee is appointed, the CO shall provide written instructions regarding the COR's responsibilities under the contract to both the COR and his or her supervisor. For the COR function to be successfully performed, it is imperative that the COR understands the part he or she plays and effectively carries out his or her responsibilities. The COR appointment memorandum is the first step in delineating what is expected of the COR. When used effectively, the appointment memorandum can be a beneficial working document used as a basis for monitoring COR performance and providing ongoing feedback. A sample appointment memorandum for a work assignment COR is contained in Appendix 42.1D. Appointment memoranda for other types of CORs will be similar in format. The CO must tailor this sample to list any duties, responsibilities, or limitations specific to the acquisition at hand.
- E) Once a COR or alternate COR is appointed, the CO should list the individual in the applicable contract, delivery order, task order or work assignment or otherwise notify the contractor and payment office. When appointing a work assignment, delivery order or task order COR, should notify the contract-level COR of the appointment. This notification can be made by a courtesy copy of the appointment letter.

42.1.5.7 Review of Delegated Duties

- A) Periodically, the CO and contract-level COR should discuss key issues related to communication, workflow planning and processes, and contractor performance. This may be accomplished by telephone for remote locations or through regularly scheduled progress meetings. At this time the CO should review and provide feedback on the COR's performance of delegated contract administration functions, such as appropriate use of contractor services, timely and thorough review of invoices and monthly progress reports. The CO should promptly inform the COR of any problem with the COR's performance of delegated functions and provide an opportunity for the COR to correct the problem. For continuing concerns with performance or conduct, the CO will consult the COR's supervisor to resolve the problem.
- B) Likewise, the contract-level COR should have periodic status reviews with work assignment, delivery or task order CORs under his/her contract to discuss contractor performance issues and to monitor the COR's performance of contract administration functions. This assessment may take place when the contract-level COR reviews delivery order, task order, or work assignment request packages, work plans, monthly progress reports, vouchers, and close-out documentation from the CORs. The contract-level COR should promptly inform the CO and

the affected COR of any problem with the COR's performance of delegated functions and provide an opportunity for the COR to correct the problem. For continuing concerns with performance or conduct, the contract-level COR shall notify the CO who will consult the COR's supervisor to resolve the problem. Additionally, at any time, the CO has authority to review and monitor the performance of work assignment, delivery or task order CORs.

- C) Supervisors are encouraged to seek feedback from the cognizant CO when preparing the performance evaluation of an employee with COR responsibilities.

42.1.5.8 Rescission of Appointment

- A) In some cases it may be necessary to rescind a COR's appointment for administrative reasons, such as when the contract has been closed out or administration of the contract is being moved to a different organization or location. In these cases the CO may unilaterally rescind the COR's appointment by notifying the COR and his or her supervisor in writing. Likewise, the COR's immediate supervisor may remove the COR simply by notifying the CO of the need to replace the COR and nominating a successor COR.
- B) If, after following the procedures outlined in section 42.1.5.8, the performance or conduct concern is not resolved, then the CO may rescind a COR's appointment under a specific contract. This action will only be taken under the circumstances listed below and only after the CO has attempted to have the COR resolve the problem, enlisted the assistance of the COR's supervisor, and consulted with the Senior Resource Official. Consideration will be given to the impact on the COR, in balance with the CO's obligation to manage Agency contracts in a manner that safeguards the Agency's interests. The proposed rescission shall be reviewed and approved by the CO's immediate supervisor. For regional COs, where the CO's supervisor is not a GS-1102, the proposed rescission shall be reviewed and approved by the Manager of the Program Management and Regional Coordination Service Center (PMRCSC) in the Superfund/RCRA, Regional Procurement Operations Division (SRRPOD) in OAM. Circumstances permitting removal of the COR include:
- 1) The COR has violated Agency or Federal acquisition regulations and/or policies;
 - 2) The COR has demonstrated an inability or unwillingness to carry out delegated functions thus jeopardizing the Government's contractual interests; or
 - 3) The Deputy Ethics Official determines there is an actual violation of the Standards of Ethical Conduct, an appearance of impropriety, or other ethical issues which preclude the employee from serving as a COR.
- C) The CO, through the CO's immediate supervisor, will provide written advance notification to the COR and the COR's supervisor indicating the COR's appointment to the contract will be

rescinded, the anticipated date of the action and the reasons for the rescission. (For regional COs, where the CO's supervisor is not a GS-1102, then the written advance notification will go through the Manager of the PMRCSC.) The notification will allow for a 10-day review period during which the COR may request a review of the action by the Director, OAM. The OAM Director may waive the 10 day review period and issue an immediate decision in urgent situations. In these cases, the Director's decision to waive the review will be noted in the rescission notification.

- D) If the program office wants to re-nominate the COR to the contract, the office must provide documentation of resolution of the situation leading to the rescission, e.g., through formal training, on-the-job training, counseling, or closer supervision. After the proposed action is reviewed and approved at a level above the CO, then the CO, at his/her discretion, may reappoint the COR to the contract.

42.1.5.9 Removal and Reinstatement from all Agency Acquisitions

- A) This section concerns the removal of a COR from all Agency contracts for cause, that is for performance or conduct reasons. The Director, OAM, may remove a COR's eligibility to serve on all Agency acquisitions for:

- 1) Violation of Federal or Agency acquisition regulations and/or policies; or
- 2) Failure to comply with Standards of Ethical Conduct for Employees of the Executive Branch, codified in 5 C.F.R. Part 2635 (1/1/99 Edition) as amended at 64 FR 24212422 (Jan. 14, 1999) and 64 FR 13063-13064 (Mar. 17, 1999).

- B) Requests to remove an employee's COR eligibility may be initiated by the CO, a program office official or the Inspector General. Such requests must address the grounds for requesting removal in a memorandum to the Director, OAM. In coordination with the COR's Senior Resource Official (SRO) and the COR's supervisor, the Director will investigate the grounds for removal. If a determination is made to remove the COR, the Director of OAM will issue a memorandum to the SRO with a copy to the COR and the COR's supervisor. As the Agency's Senior Procurement Executive, the Director of OAM is the deciding official as to whether an employee may continue to perform contract management functions.

- C) The Director of OAM may reinstate employees who have had their COR responsibilities withdrawn upon the written recommendation of his or her SRO. The recommendation for reinstatement must contain:

- 1) A brief description of the circumstances of the withdrawal, and
- 2) Steps taken or being taken to remedy the conduct or performance deficiency. Contracts

APPENDIX 42.1 A DUTIES THAT MAY BE PERFORMED BY CONTRACT-LEVEL CORs, IF DELEGATED BY THE CO

A) As stated in section 42.1.5.1 of this section, the Federal Acquisition Institute (FAI) has established the basic duties CORs perform. FAI's COR Workbook details the duties and contains extensive documentation of the steps to be taken in performing each duty which is not repeated here. The Workbook can be read or downloaded at <http://www.fai.gov/pdfs/corbluebook.pdf>

B) In this appendix, for each FAI-established duty, Agency-unique steps are listed and applicable Agency guidance is referenced. **This list is not intended to be a standard operating procedure for contract management functions. These duties must be tailored to the specific program and contractual needs.**

1) Prepare a Requirements Package

- a) Forecasting Requirements--Estimate Program Office lead time, available funding, and total acquisition costs, as part of the planning, programming and budgeting process as required in Chapter 7 of this manual.
- b) Communicating with IndustryBFollow the standards of the Office of Acquisition Management's (OAM) document, AProgram Manager's Guide For Communicating With Industry,@ dated September 4, 2001 which provides general guidelines regarding the types of info that may be shared with the public, primarily in the context of procurement opportunities. This guide is available on OAM's website at <http://epawww.epa.gov/oamintra/policy/pmgci.pdf>.
- a) Acquisition Planning--Provide the CO backup information to be used in drafting the written acquisition plans as required by the Federal Acquisition Regulation, Part 7, and Chapter 7 of this manual. Facilitate meeting program office small and disadvantaged business utilization and other socio-economic goals.
- b) Procurement Initiation Notice (PIN)BFollowing the procedures outlined in Chapter 7 of this manual, prepare key documents to initiate the acquisition. When requested by the CO, provide applicable PIN documents for simplified acquisitions, or orders under other agencies' contracts, e.g., GWACs or GSA schedules. Prepare an acquisition statement of work in accordance with Chapter 11 of this manual. □

APPENDIX 42.1 A DUTIES THAT MAY BE PERFORMED BY CONTRACT-LEVEL CORs, IF DELEGATED BY THE CO

- A) As stated in section 42.1.5.1 of this section, the Federal Acquisition Institute (FAI) has established the basic duties CORs perform. FAI's COR Workbook details the duties and contains extensive documentation of the steps to be taken in performing each duty which is not repeated here. The Workbook can be read or downloaded at <http://www.fai.gov/pdfs/corbluebook.pdf>
- B) In this appendix, for each FAI-established duty, Agency-unique steps are listed and applicable Agency guidance is referenced. **This list is not intended to be a standard operating procedure for contract management functions. These duties must be tailored to the specific program and contractual needs.**
- 1) Prepare a Requirements Package
 - a) Forecasting Requirements--Estimate Program Office lead time, available funding, and total acquisition costs, as part of the planning, programming and budgeting process as required in Chapter 7 of this manual.
 - b) Communicating with IndustryBFollow the standards of the Office of Acquisition Management's (OAM) document, AProgram Manager's Guide For Communicating With Industry, @ dated September 4, 2001 which provides general guidelines regarding the types of info that may be shared with the public, primarily in the context of procurement opportunities. This guide is available on OAM's website at <http://epawww.epa.gov/oamintra/policy/pmgci.pdf>.
 - c) Acquisition Planning--Provide the CO backup information to be used in drafting the written acquisition plans as required by the Federal Acquisition Regulation, Part 7, and Chapter 7 of this manual. Facilitate meeting program office small and disadvantaged business utilization and other socio-economic goals.
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- e) Ordering Work under the Contract--Review procurement packages submitted for work assignments, delivery orders, or task orders to ensure the package is current, accurate, and complete before forwarding to the CO for action. Ensure that the procurement package identifies vulnerable and sensitive services, potential conflicts of interest, as well as appropriate management controls. Track orders placed under the contract.

2) Government Property

In accordance with Chapters 7 and 45 of this manual, identify and justify the use of Government property under the contract.

3) Technical Assistance

- a) In accordance with EPAAR Part 1515 and Chapter 7 of this manual develop technical evaluation criteria, chair the technical evaluation panel, evaluate offers, coordinate the consensus documentation, and prepare the technical evaluation panel report justifying the panel's findings. Draft questions for fact finding, discussions, and prenegotiation position on technical proposals.
- b) Technical Evaluation of Work Plans and Delivery Order Staffing Plans-Prepare detailed findings and recommendations on the reasonableness of the proposed tasks, labor hours and mix, materials and quantities, etc., based on comparison with the statement of work and the independent Government cost estimate. In accordance with Chapter 16 of this manual, conduct evaluations of offers received under multiple award contracts.

4) COR Workplan

- a) Set-up a file system containing all relevant documentation including the basic contract, list of CORs under the contract, all correspondence and meetings related to the contract, technical direction, contract deliverables received and reviewed, payment file and other items that will provide an audit trail of the contract-level COR's actions under the contract. Maintain files in accordance with Agency National Records Management Program policy. Guidance on maintaining EPA Series 202, Contract Management Records, is available on the Intranet at <http://www.epa.gov/records/policy/schedule/sched/202.htm>.
- b) Protect information that is prohibited from disclosure by law, such as trade secrets and privileged or confidential commercial or financial information, and certain interagency and intra-agency predecisional deliberative communications. Protect information about individuals when disclosure

would constitute a clearly unwarranted invasion of personal privacy. Protect records or information compiled for law enforcement purposes, if certain interests would be harmed by release, including when disclosure could reasonably be expected to interfere with enforcement proceedings or to constitute an unwarranted invasion of personal privacy.

5) Post Award Orientation

- a) Be familiar with the terms and conditions of the contract and the SOW. Know who the key players are (CO, CORs, contractor's Project Manager) and understand their roles, responsibilities, and delegated authority. Know the proper method for ordering work (work assignment, delivery order, or task order) under the contract.
- b) Coach delivery/task order or work assignment CORs in appropriate administrative processes and practices for ordering and overseeing work under the contract.

6) Administering Government Property

In accordance with Chapter 45 of this manual, properly transfer, monitor the use and disposal of Government Property under the contract.

7) Monitoring Contractor Performance

- a) In accordance with EPA Order 1900.1A, Proper Use of Contractor Services, provide and document technical direction to the contractor, if permitted by the contract. Guard against inappropriate contractor services, such as personal services and inherently governmental functions.
- b) Review monthly technical and financial progress reports. Compare progress to contractor invoice charges. Consult with the CO on any potential problems identified through such reviews.
- c) Know the standards of conduct that apply to employees of the executive branch. Treat contractors fairly and impartially. Avoid personal conflicts of interest, and prohibited activities, such as unauthorized commitments, directed subcontracting, and personal services.

8) Inspection and Acceptance

Track, inspect, accept or reject contract deliverables.

9) Past Performance

- a) Complete contractor performance evaluations electronically by use of the National Institutes of Health Contractor Performance System as specified in Subpart 1509 of the EPAAR. The website for the System is <https://silknih.gov/cps/epa/homepage>.
- b) For award fee contracts, accurately and promptly complete Performance Evaluation Reports, participate on award fee panels, and apply award fee factors.
- c) In conjunction with the CO, provide documentation to the Office of Grants and Debarment concerning performance and related problems. Report indicators of fraud and other misconduct to the CO, the Inspector General, and the Office of Grants and Debarment.

10) Modifications

Prepare purchase requests for modifications including appropriate documentation, such as a revised SOW and cost estimate. Document evaluation of the contractor's proposal (e.g., of the labor hours, materials, etc., incurred or proposed for the modification).

11) Options

Determine the need for contract options when planning an acquisition. At least 120 days prior to the required date of preliminary notice as set forth in the contract, recommend whether to exercise an option or not. Obtain the necessary commitment of funds. In a timely manner, provide the CO with a written recommendation indicating if the option should be exercised and supporting this decision in accordance with FAR 17.207.

12) Delays

Notify the CO about a delay in the delivery or performance schedule under the contract and the technical impact of this delay. Assist the CO in evaluating the contractor's response.

13) Stop Work

Identify potential conditions to stop work. If appropriate, recommend the CO issue a stop work order. Assist in discussions with the contractor and recommend to the CO when work can be resumed.

14) Claims

Notify the CO of potential disputes under the contract. Assist the CO in resolving disputes and in processing formal claims

15) Remedies

Notify the CO of performance failures and provide technical assistance to the CO, as appropriate.

16) Termination

Identify events that may lead to contract termination. Provide sufficient information to support pursuing the appropriate termination procedure.

17) Payment

- a) As detailed in Chapter 11 of this manual, review contractor invoices and approve for payment. If appropriate, suspend costs using EPA Form 1900-68.
- b) Track funds expended against contract ceilings.
- c) Maintain records on current billing/final indirect cost rates under the contract. Ensure contractor invoices reflect the appropriate rates.

18) Closeout

As detailed in Unit 42 of the Acquisition Handbook, notify the CO when contractor performance is completed under the contract. Assist with closeout procedures.

APPENDIX 42.1B DUTIES THAT MAY BE PERFORMED BY OTHER TYPES OF CORs, IF DELEGATED BY THE CO

A) As stated in section 42.1.5.1 of this section, the Federal Acquisition Institute (FAI) has established the basic duties CORs perform. FAI's COR Workbook details the duties and contains extensive documentation of the steps to perform each duty which is not repeated here. The Workbook can be read or downloaded at <http://www.fai.gov/pdfs/corbluebook.pdf>

B) In this appendix, for each FAI-established duty, Agency-unique steps are listed and applicable Agency guidance is referenced. The duties described below are meant to provide an overview of the types of functions performed by the types of CORs listed in section nine of this section. **This list is not intended to be a standard operating procedure for contract management functions. These duties must be tailored to the specific program and contractual needs.**

1) Prepare a Requirements Package

Prepare a procurement request with supporting documentation (SOW, cost estimate, etc.) to order work under the contract. Identify vulnerable, sensitive services, potential conflicts of interest, as well as appropriate management controls.

2) Government Property

In accordance with Chapters 7 and 45 of this manual, identify and justify the use of Government property under the work assignment, delivery or task order.

3) Technical Assistance

Technical Evaluation of Work Plans and Task Order Staffing Plans--Prepare detailed findings and recommendations on the reasonableness of the proposed work, labor hours and mix, materials and quantities, etc., based on comparison with the SOW and the independent Government cost estimate. In accordance with Chapter 16 of this manual, conduct evaluations of offers received under multiple award contracts.

C) COR Workplan

1) Set-up a file system containing all relevant documentation including the basic contract, internal correspondence, technical direction, contract deliverables received and reviewed, payment file and other items that will provide an audit trail of the actions on the acquisition. Maintain files in accordance with Agency National Records Management Program policy. Guidance on maintaining EPA Series 202, Contract Management Records, is available on the Intranet at <http://www.epa.gov/records/policy/schedule/sched/202.htm>.

- 2) Protect information that is prohibited from disclosure by law, such as trade secrets and privileged or confidential commercial or financial information, and certain interagency and intra-agency predecisional deliberative communications. Protect information about individuals when disclosure would constitute a clearly unwarranted invasion of personal privacy. Protect records or information compiled for law enforcement purposes, if certain interests would be harmed by release, including when disclosure could reasonably be expected to interfere with enforcement proceedings or to constitute an unwarranted invasion of personal privacy.

D) Post Award Orientation

Be familiar with the terms and conditions of the contract and the SOW. Know who the key players are (CO, CORs, contractor's Project Manager) and understand their roles, responsibilities, and delegated authority. Know the proper method for ordering work (work assignment, delivery order, or task order) under the contract.

E) Administering Government Property

In accordance with Chapter 45 of this manual, properly transfer, monitor the use and disposal of Government Property under the contract.

F) Monitoring Contractor Performance

- 1) In accordance with EPA Order 1900.1A, Proper Use of Contractor Services, and the terms of the acquisition, provide and document technical direction to the contractor. Guard against inappropriate contractor services, such as personal services and inherently Governmental functions.
- 2) Progress Reports--Review monthly technical and financial progress reports. Compare progress to contractor invoice charges. Consult with the contract-level COR on any potential problems identified through such reviews.
- 3) Know the standards of conduct that apply to employees of the executive branch. Treat contractors fairly and impartially. Avoid personal conflicts of interest, and prohibited activities, such as unauthorized commitments, directed subcontracting, and personal services.

G) Inspection and Acceptance

Track, inspect, accept or reject contractor deliverables.

H) Past Performance

- 1) Assist the contract-level COR with compiling a record of the contractor's past performance.
- 2) For award fee contracts, accurately and promptly complete Performance Evaluation Reports, participate on award fee panels, and apply award fee factors.
- 3) In conjunction with the CO and contract-level COR, provide documentation to the Office of Grants and Debarment concerning performance and related problems, as appropriate. Report indicators of fraud and other misconduct to the contract-level COR, CO, the Inspector General, and Office of Grants and Debarment.

I) Modifications

Prepare purchase request for modifications or amendments to the work assignment, delivery order, or task order, including appropriate documentation, such as revised SOW and cost estimate. Document evaluation of the contractor's proposal (e.g., of the labor hours, materials, etc., incurred or proposed for the modification).

J) Options *Usually reserved for the contract-level COR.* K)

Delays

Notify the contract-level COR about a delay in the delivery or performance schedule under the contract and the technical impact of this delay. Assist the contract-level COR in evaluating the contractor's response.

L) Stop Work

Identify potential conditions to stop work. If appropriate, recommend the CO and contractlevel COR issue a stop work order. Assist in discussions with the contractor and recommend to the CO and contract-level COR when work can be resumed.

M) Claims

Notify the contract-level COR of potential disputes under the contract. Assist the CO and contract-level COR in resolving disputes and in processing formal claims.

N) Remedies

Notify the contract-level COR of performance failures and provide technical assistance to the CO and contract-level COR, as appropriate.

O) Termination

Identify events that may lead to work assignment, delivery or task order termination. Provide sufficient information to support pursuing the appropriate termination procedure.

P) Payment

- 1) As detailed in Chapter 11 of this manual, review contractor invoices and approve for payment. If appropriate, recommend suspension of costs using EPA Form 1900-68.
- 2) Track funds expended versus funds remaining on the work assignment, delivery order, or task order. Notify the contract-level COR if additional funds will be required.

Q) Closeout

As detailed in Unit 42 of the Acquisition Handbook, notify the contract-level COR when contractor performance is completed under the work assignment, delivery order, or task order. Assist with closeout procedures.

APPENDIX 42.1C COR NOMINATION FORM

NOMINATION OF THE CONTRACTING OFFICER'S REPRESENTATIVE (COR)

Submit this form to the cognizant contracting officer within the Office of Acquisition Management or Regional contracting office. The contracting officer will respond to this nomination, in writing, to both the nominee and the nominee's immediate supervisor. For additional information on the requirements for being a COR, see Chapter 42 of the Contracts Management Manual.

1a. Name of Nominee	1b. Title, Series, and Grade	
c. Mailing Address: Organization (AAship): Office: Mail Code: Street Address: City, State & Zip Code:	d. E-mail address:	
	e. Phone Number	
	f. Fax Number	
2. The nomination is for: <input type="radio"/> Contract-level COR <input type="radio"/> Delivery Order COR <input type="radio"/> Task Order COR <input type="radio"/> Work Assignment COR <input type="radio"/> Other or alternate (specify):	3. Training completed Date Completed <input type="radio"/> a. FAI's COR Mentor Program <input type="radio"/> b. OAM's COR Training Course (Either a or b are <i>Required for all CORs</i>) <input type="radio"/> d. OAM's Recertification Course <i>Required every 3 years after completing either a or b</i>	
Under Contract Number:		
4. Briefly describe the nominee's experience in performing COR duties and technical expertise in the subject matter of the acquisition.		
5. I understand that my eligibility to be a COR is dependent on adequately performing my COR duties, following ethical standards of conduct for employees of the Executive Branch, and maintaining my training. If any of these conditions are not met, I may be removed from this contract. I cannot redelegate my COR duties. In the event that I am unable to continue performing my COR duties, I will contact the contracting officer immediately. I have filed Office of Government Ethics Form 45Q Confidential Financial Disclosure Report, with the cognizant Deputy Ethics Official.		

6. If there is a need to remove the COR, for any reason, I will notify the contracting officer immediately.

Signature of Nominee's Immediate Supervisor

Date

Phone number:

EPA Form 1900-65. (Rev. 10-02) Previous Editions Obsolete. Electronic and Paper Copies Acceptable.

APPENDIX 42.1D SAMPLE COR APPOINTMENT MEMORANDUM**MEMORANDUM**

[Date]

SUBJECT: Appointment as a Work Assignment Contracting Officer's Representative under
Contract Number

FROM: CO /s/
Contracting Officer

TO: Newly Appointed
Work Assignment Contracting Officer's Representative

I hereby appoint you as a work assignment contracting officer's representative (COR) under the subject contract. This appointment is effective as of the date of this memorandum and shall expire: 1) when (the) work assignment(s) is/are completed, 2) when you are relieved of your COR responsibilities, or 3) when rescinded in writing by myself or any successor contracting officer (CO). You may not delegate your COR responsibilities. The alternate COR, if one has been appointed, may act **ONLY** if you are on leave or travel.

As a work assignment COR you are a key player in protecting the Government's interests and carrying out the Government's obligations under the contract. To do so effectively, it is imperative that you are familiar with the contract terms and conditions as well as your responsibilities and limitations as a COR. You are hereby authorized and put under obligation to carry out those responsibilities set forth in Attachment 42.1A. You are not authorized to take any action which is not set forth herein and are specifically directed not to take any of the prohibited actions set forth in Attachment 42.1B. Further clarification of these responsibilities and prohibitions may be obtained from the CO. Any act on your part which is not within the scope of this appointment may lead to your personal financial liability to the contractor. The contract-level COR (project officer) is _____, if you have any questions concerning your delegated authority, please do not hesitate to call him/her on 000000-0000 or me on 000-000-0000 or e-mail me at _____.

Attachments

cc: COR's immediate supervisor Contract-level COR

ATTACHMENT 42.1D-1 TO THE COR APPOINTMENT MEMORANDUM

As a Work Assignment Contracting Officer's Representative under Contract -----, you are responsible for the following:

1. Maintaining Your COR Eligibility

- a. Remain current on all training required for CORs in Chapter 42 of the Contracts Management Manual. (The CMM can be found on the Agency Intranet at <http://epawww.epa.gov/oamintra/policy/cmm.pdf>.) Specifically, you are required to complete the Recertification Course every three years after completing either the COR Mentor Course or the COR Supplement Course, whichever was completed later. If your training lapses, you are no longer eligible to be a COR under this contract.
- b. If your training lapses or if there is a need to relieve you of your COR responsibilities, notify the CO immediately. Until another COR is appointed, you remain responsible for performing your COR functions. Promptly turn over all records regarding this contract to the successor COR.
- c. Know the terms and conditions of the contract and the work assignment, including the statement of work and the approved work plan.
- d. Be informed about Agency and Federal acquisition policies and procedures. This information is available on the Office of Acquisition Management's Intranet site at <http://intranet.epa.gov/oamintra/>. The Federal Acquisition Institute's COR Workbook provides a generic list of COR functions and the steps involved in performing these functions. The COR Workbook can be downloaded at <http://www.fai.gov/pdfs/corbluebook.pdf> Chapter 42 of the Contracts Management Manual (CMM) contains a list of Agency-specific COR functions.
- e. Comply with the standards of conduct that apply to employees of the executive branch. Treat contractors fairly and impartially. Avoid personal conflicts of interest, and prohibited activities, such as unauthorized commitments, directed subcontracting, and personal services. While you are a COR, you must file Office of Government Ethics Form 450, Confidential Financial Disclosure Report, with your organization's Deputy Ethics Official.

2. Procurement Package

To order work under the contract, prepare a procurement request with supporting documentation (SOW, cost estimate, etc.). Identify vulnerable, sensitive services, potential conflicts of interest, as well as appropriate management controls.

3. Government Property

In accordance with Chapters 7 and 45 of the Contracts Management Manual (CMM), identify and justify the use of Government property under the work assignment. In accordance with Chapter 45 of the CMM, properly transfer, monitor the use and disposal of Government property under the contract. Coordinate Government property issues with the CO and property Administrator.

4. Technical Assistance

- a. Review contractor work plans for approval/disapproval. When requested, prepare detailed findings and recommendations on reasonableness of the proposed work, labor hours and mix, materials and quantities, etc., based on comparison with the SOW and the independent Government cost estimate. In accordance with Chapter 16 of the CMM, conduct evaluations of offers received under multiple award contracts.
- b. Inform the CO of any potential or real conflicts of interest which may arise under the contract. Recommend possible mitigation or avoidance strategies.

5. Record Keeping

- a. Establish and maintain a separate file for documents and correspondence pertaining to the work assignment. Place in this file correspondence to and from the contractor, work associates, and contracting officer; comments and approval of deliverables; documentation of verbal communication with the contractor; technical direction; voucher reviews and disapprovals/approvals; contractor evaluations; and other documents pertaining to the contract. Document actions, conversations, meetings, technical directions, etc., as they occur and include these in the file. Upon completion of the contract, forward this file to the CO for inclusion in the official work assignment file.
- b. Protect information that is prohibited from disclosure by law, such as trade secrets and privileged or confidential commercial or financial information, certain interagency and intra-agency predecisional deliberative communications, information about individuals when disclosure would constitute a clearly unwarranted invasion of personal privacy, and records or information compiled for law enforcement purposes, if certain interests would be harmed by release, including when disclosure could reasonably be expected to interfere with enforcement proceedings or to constitute an

unwarranted invasion of personal privacy. 6.

Monitoring Contractor Performance

- a. In accordance with EPA Order 1900.1A, Proper Use of Contractor Services, and the terms of the acquisition, provide and document technical direction to the contractor. Guard against inappropriate contractor services, such as personal services and inherently Governmental functions.
- b. Assist the contractor in interpreting technical requirements. Differences of understanding or opinion of technical requirements between the Government and the contractor which cannot be resolved shall be referred to the CO for resolution.
- c. Monitor and oversee the contractor's technical effort and ensure that performance strictly conforms with the terms and conditions of the contract. Promptly inform both the contractor and the CO of any unsatisfactory performance or noncompliance with the contract or work assignment statement of work and terms and conditions.
- d. Maintain reasonable contact with the contractor so as to become aware of and gain an understanding of any problems or potential problems regarding contract performance. Report these to the CO.
- e. Review and provide input/recommendations and concurrence to the CO regarding the contractor's proposed use of consultants and subcontractors.
- f. Perform on-site surveillance of contractor performance, as necessary, to ensure compliance with the technical provisions of the contract.
- g. Spot check to see that contractor personnel are on the job and accomplishing their assigned tasks.
- h. Determine causative factors for any slippage in performance schedule and provide a report of such to the CO. If the contractor is responsible for the slippage, the COR shall recommend to the CO and subsequently monitor corrective action.

7. Inspection and Acceptance of Deliverables

- a. Ensure the timeliness and acceptability of all deliverables and/or reports submitted by the contractor.
- b. Perform inspection of completed work and/or services and certify acceptance or Contracts

nonacceptance of work. 8.

Past Performance

Complete a contractor evaluation form for each work assignment at the end of each period of performance (base or option periods), and forward it to the contract-level COR.

9. Modifications

- a. Prepare purchase request for amendments to the work assignment, including appropriate documentation, such a revised SOW and cost estimate. Document evaluation of the contractor's proposal (e.g., of the labor hours, materials, etc., incurred or proposed for the modification).
- b. Ensure that the work assignment is formally modified or amended before the contractor proceeds with any changes in the work, terms, or conditions of performance.

10. Payment

- a. As detailed in Chapter 11 of this manual, review contractor invoices and recommend approval or disapproval, as appropriate, to the contract-level COR. Such review shall be completed in a manner so as to allow timely payment under the Prompt Payment Act.
- b. Track funds expended versus funds remaining on the work assignment. Ensure that costs do not exceed available funding. Notify the contract-level COR if additional funds will be required. Prepare funding requests.
- c. Progress Reports--Review monthly technical and financial progress reports. Compare progress to contractor invoice charges. Resolve errors or deficiencies in the reports. Consult with the contract-level COR on any potential problems identified through such reviews. Monitor contractor costs and promptly report, in writing, wasteful contractor practices to the contract-level COR.
- d. Review invoices and monthly progress reports to ensure that the contractor utilizes the labor skill mix (labor categories and hours) necessary to fulfill the Government's requirement. The contractor's labor skill mix used on the work assignment, should closely approximate what was agreed to in the approved work plan. Excessive used of either lower or higher skilled labor should trigger a closer review of actual usage versus the approved work plan.

11. Closeout

Notify the contract-level COR when contractor performance is completed under the work assignment, delivery order, or task order. Assist with closeout procedures.

ATTACHMENT 42.1D-2 TO THE COR APPOINTMENT MEMORANDUM**PROHIBITIONS** As a contracting officer's representative:

- 1) **DO NOT** solicit proposals for enhancements to the contract; 2)
DO NOT modify the stated terms of the contract;
- 3) **DO NOT** sign supplemental agreements (i.e., contract modifications);
- 4) **DO NOT** issue instructions to the contractor to start or stop work unless you are specifically authorized by the CO in writing;
- 5) **DO NOT** request that the contractor perform work outside the scope of the contract or work assignment, or perform any work without a valid work assignment or delivery order if work is initiated under the contract through these means;
- 6) **DO NOT** direct changes to:
 - what items are included in the delivery schedule, - time of delivery,
 - place of delivery,
 - method of shipment,
 - packing of deliverables,
 - quantity, or level-of-effort,
 - scope of work, drawings, designs, specifications, or statement of work.
- 7) **DO NOT** give guidance to the contractor, either orally or in writing, which might be interpreted as a change in the expressed scope, specifications, terms or conditions of the contract or work assignment;
- 8) **DO NOT** make any changes that will affect the duration (period of performance) of the contract or work assignment;
- 9) **DO NOT** make any changes that will affect the cost of the contract or work assignment;
- 10) **DO NOT** authorize the contractor to incur costs in excess of the estimated costs or other limitation on costs or funds set forth in this contract or work assignment;

- 11) **DO NOT** approve items of cost not specifically authorized by the contract or work assignment;
- 12) **DO NOT** render a decision on any dispute or any question of fact under the Disputes Clause of the contract;
- 13) **DO NOT** take any action with respect to termination of the contract, except to notify the CO of circumstances which would appear to warrant such action;
- 14) **DO NOT** authorize delivery or disposition of Government-furnished property;
- 15) **DO NOT** discuss procurement plans or any other advance information that might provide preferential treatment to one firm over another (The Program Manager's Guide For Communicating With Industry, @ dated September 4, 2001 provides general guidelines regarding the types of info that may be shared with the public, primarily in the context of procurement opportunities. This guide is available on OAM's website at <http://epawww.epa.gov/oamintra/policy/pmgci.pdf>);
- 16) **DO NOT** make commitments or promises to any contractor relating to the award of a contract.

Section 42.2 Management Integrity In Acquisition Systems

42.2.1 PURPOSE

This section sets forth the internal control objectives and techniques to be used for evaluating EPA acquisition systems and their performance.

This section sets forth the means by which certification is made to the Agency head that the Agency's acquisition policies and procedures conform to all Federal laws and regulations, that they support the Agency's policies, objectives, and mission, and that they contain the necessary elements to promote efficient and effective acquisition throughout the Agency.

42.2.2 BACKGROUND

B) Sections 1(c), 1(d) and 1(i) of Executive Order 12352, Federal Procurement Reforms, require the heads of agencies to "ensure timely satisfaction of mission needs at reasonable prices by establishing criteria to improve the effectiveness of procurement systems, establish criteria for enhancing effective competition and limiting noncompetitive actions...", and to provide the agency procurement executive with criteria to use to "evaluate system performance in accordance with approved criteria...and certify to the agency head that systems meet approved criteria."

- C) The Federal Managers' Integrity Act of 1982, P.L. 97-255, signed into law on September 8, 1982, requires that each executive agency establish internal accounting and administrative controls in accordance with standards prescribed by the Comptroller General. The Act also required OMB to establish guidelines by which agencies can evaluate their systems of internal accounting and administrative control. The Act further requires a statement by December 31 of each year from the head of each executive agency to the President and the Congress stating whether or not the Agency's systems of internal control comply with the requirements of the Act.
- D) The Agency's Organization and Functions Manual authorizes OAM to conduct a contracts management technical review and internal evaluation of all contracting and simplified acquisition operations.
- E) This section was originally issued as Chapter 10 of the Contracts Management Manual.

42.2.3 AUTHORITY/APPLICABILITY

- A) This section implements acquisition management responsibilities derived from Executive Order 12931, October 17, 1994, on Federal Procurement Reforms and internal control responsibilities derived from the Federal Manager's Financial Integrity Act of 1982, and establishes the Office of Acquisition Management's (OAM) Management Integrity Program.
- B) This section also implements the requirements of EPA Order 1000.24, Management Integrity, and the Office of Acquisition Management and Budget (OMB) Circular A-123, Management Accountability and Control, dated June 21, 1995. c. Applicability. This directive is applicable to EPA Headquarters acquisition and contracts management organizations, Regional contracting offices, and all EPA field offices/ individuals that have been delegated contracting authority, e.g., On-Scene Coordinators (OSC) and purchase cardholders. The plans outlined in this section will be used in formal internal contract reviews of all organizations' purchase and contract activities, and for certification to the Agency head that the acquisition systems meet standards of acceptability to ensure efficient operations and to prevent fraud, waste, and mismanagement of Government funds.

42.2.4 DEFINITIONS

- A) Acquisition - The acquiring by contract with appropriated funds of supplies or services (including construction) by and for the use of the Federal Government through purchase or lease, whether the supplies or services are already in existence or must be created, developed, demonstrated, and evaluated. Acquisitions begins at the point when Agency needs are established and includes the description of requirements to satisfy Agency needs, solicitation and selection of sources, award of contracts, contract financing, contract performance, contract administration, and those technical and management functions directly

related to the process of fulfilling Agency needs by contract. (Federal Acquisition Regulation Part 2.101 (b))

- B) Procurement system - Includes all functions performed in the process of acquisition, whether manual or automated.
- C) Internal Control objective - A desired goal or condition for a specific event cycle.
- D) Internal Control technique - A process or document that is being relied on to efficiently and effectively accomplish a control objective and thus help safeguard an activity from waste, loss, unauthorized use or misappropriation.

42.2.5 POLICY

Introduction to Internal Control Objectives

The criteria listed below in sections 42.2.5.1 through 42.2.5.6 identify the internal control objectives established for evaluating EPA's acquisition systems. These objectives state in broad terms the desired goals and conditions expected for each specific area. Section 42.2.5.7 states the internal control techniques that will be employed to evaluate how well the Agency's procurement systems meet the stated internal control objectives and Section 42.2.5.8 discuss how corrective actions will be implemented.

42.2.5.1 Management of the Acquisition System A)

Management

The designated agency procurement executive ensures that goods and services are acquired with reasonable prices, timely delivery, and required quality, and compliant with statutory and regulatory requirements, and effectively fulfill the program needs of the Agency.

B) Organization

The acquisition organization enhances the role of acquisition management in meeting mission goals through its location and structure

C) Staffing

The Agency's acquisition staffing and career development plan ensures that the employees are properly trained and qualified and that all applicable continuous education initiatives are fulfilled.

D) Information Management

The acquisition system facilitates operations, management, tracking, reporting, and evaluation of information on all phases of the acquisition process by using Information Technology to the fullest extent possible.

E) Quality Control

The Agency effectively monitors, evaluates, documents, and improves the quality of the acquisition system's performance.

F) Implementation of Socio-Economic Policies

The Agency ensures that socio-economic policies are carried in accordance with the intent of the Congress and direction from the president.

G) Policy and Procedural Guidance

The Agency provides effective policy and procedural guidance to those involved in acquisition.

H) Performance Measurement

The Agency effectively identifies, publishes, and monitors performance measurement goals for individual acquisition events.

I) Customer Service Evaluation

The Agency actively assesses customer service satisfaction and considers customer service concerns in decision making.

J) External Inquiry Process

The Agency effectively responds to external requests for information via the Freedom of Information Act and Other statutes

42.2.5.2 Planning the Acquisition Process

A) Defining Acquisition Requirements

The Agency system for defining acquisition requirements is simplified and streamlined as much as possible and readily embraces applicable Federal and Agency acquisition initiatives.

B) Planning Acquisition Actions

The Agency effectively and accurately plans its acquisitions actions taking all relevant factors into consideration with program and acquisition managers participating in the process

42.2.5.3 The Solicitation Process A)

Solicitation Instruments

Solicitation instruments are clear, complete, accurate, and provide the proper basis for evaluation and selection.

B) Cost or Price Analysis

The Agency's acquisition process provides effective support and tools to perform cost or price analysis to determine the reasonableness and fairness of price to be paid.

C) Negotiations

Negotiations are carried out in accordance with applicable Federal and Agency regulations and policies, to provide fair and equitable treatment to contractors, and reflect use of good business judgement.

D) Contract Awards

The Agency's policies and procedures assure that awards are made timely in compliance with applicable statutes, regulations and policies, and that they follow accepted business practices.

E) Protests

Response to the variety of protests available to offerors is conducted fairly, timely, and in accordance with Federal and Agency regulations and procedures. **42.2.5.4 The Post Award**

Acquisition Process

A) Contract Management

The Agency procedures and processes ensure that contracts are properly administered and managed and consider innovation and streamlining whenever possible.

B) Contractor Performance

The Agency's process for contract management ensures contractors perform in accordance with all terms and conditions of the contract

C) Contract Work Ordering Issuance

The Agency's procedures and processes ensure that work performed under contracts is within the scope of those contracts and complies with Federal and Agency regulations.

D) Contractor Systems

Agency procedures ensure that a contractor's administrative and financial systems provide maximum protection to the government while conforming with public law, the contract, and efficient and effective business practices.

E) Contract Modification and Change Orders

The acquisition system provides for the proper use, control, documentation, pricing, negotiation, and award of contract modifications and change orders in accordance with Federal and Agency regulations and procedures.

F) Contract Payment

The Agency's system ensures that the method of payment is appropriate, that payment is correct and prompt, and that security interest arising as a result of payment are protected.

B) Contract Close-out Termination Procedures

The Agency's contract closeout and termination procedures assure timely release of funds, prompt settlement of partial and complete terminations, prompt closeout of contracts, and retirement of official files.

42.2.5.5 Simplified Acquisitions

Management

A) The Agency provides the necessary facilities, staffing, training, policies, and procedures for performing simplified acquisitions in an effective manner.

B) Procedures

The Agency effectively uses automated procedures which minimize administrative and purchase costs and improves the opportunities for small business concerns to obtain a fair

proportion of Agency business.

C) Administrative Functions

The Agency effectively administers and monitors the simplified acquisition function to assure it is performed in accordance with Federal and Agency regulations and procedures.

42.2.5.6 Purchase Card

D) Policies and Guidance

The Agency issues and maintains effective policies and guidance for using purchase cards. B)

Training

The Agency provides the necessary facilities, staffing, and training for purchase card users and approving officials.

C) Management

The Agency properly controls the issuance of purchase card authority, oversees purchases being made, and ensures compliance with Federal and Agency guidance.

42.2.5.7 Internal Control Techniques

The following are the internal control techniques that will be used by OAM to verify that the objectives listed above are accomplished, thus helping to safeguard against waste, loss, unauthorized use, or misappropriation:

- 1) Federal and Agency acquisition regulations, policies, procedures, and guidance. The Contracts Management Manual and Acquisition Handbook are documents issued by the Office of Acquisition Management in which many of the specific requirements, milestones, and detailed performance objectives for the office are identified. Other specific requirements are identified through a variety of other means by the Office of Acquisition Management. All of these documents serve as the basis by which the objectives described above are evaluated.
- 2) Management knowledge gained from the daily operation of the Office of Acquisition Management and each of its subcomponents.
- 3) Acquisition Management Reviews (AMR) conducted for the purpose of assessing adherence to Federal and Agency regulations and procedures and the effectiveness of management controls.
- 4) Semi-annual performance reports.

5) Office of Inspector General and General Accounting Office reports, including audits, inspections, reviews, and investigations.

6) Special reviews conducted on an ad-hoc basis, including peer reviews. 7)

Analysis of feedback received from customers.

8) The recommendation of senior management obtained during discussions concerning EPA's material and Agency weaknesses.

42.2.5.8 Implementing Corrective Action

A) The Office of Acquisition Management is committed to continuous improvement. Therefore, the management controls and management techniques outlined above will be periodically reviewed and updated as changes occur in the Federal acquisition arena and as their effectiveness is measured.

B) The Office of Acquisition Management is committed to implementing corrective actions as weaknesses and improvements are identified. Once corrective actions are identified, appropriate time frames will be established and monitored to ensure proper implementation.

C) The Office of Acquisition Management assures the proper implementation of corrective actions by using the internal control techniques outlined in Section 42.2.5.7.

Section 42.3 RESERVED

Section 42.4 Agency Shutdowns and Closures

42.4.1 PURPOSE

This section provides guidance for managing contracts during and after shutdown or closure of EPA facilities.

42.4.2 BACKGROUND

The Agency may be shut down or closed for (1) appropriation hiatuses (i.e., the absence of an appropriation bill or a continuing resolution passed by Congress and signed by the President), (2) weather conditions or natural disasters, or (3) other factors such as Executive Orders, building hazards, or public safety.

This section was originally issued as Contracts Management Chapter 20.

42.4.3 AUTHORITY/APPLICABILITY

If the Agency is faced with an appropriation hiatus, this section applies to all contract actions when there is insufficient carryover funding to continue operations as determined by senior Agency managers and contract actions funded from annual appropriations. For additional information, see EPA Order 1000.26, EPA Contingency Plan for the Shutdown of the Agency due to a Funding Hiatus.

42.4.4 DEFINITIONS

- A) Shutdown personnel - Shutdown personnel are those individuals designated by an Agency office to continue to work for up to five and one-half days to facilitate the orderly shutdown of the Agency during an Agency shutdown. Once the services of these employees are no longer required, they will be furloughed.
- B) Excepted personnel - Excepted personnel are those individuals designated by the Agency to perform excepted activities, such as the protection of life and property. Therefore, excepted personnel will continue to report following a shutdown of the Agency and in the absence of an appropriation, unless notified otherwise.

The Office of Acquisition Management (OAM) will identify as either shutdown or excepted personnel specific Contracting Officers (COs), who will manage contracts for shutdown and excepted activities (see 42.4.4(d)) during the shutdown. Regional contracting offices will identify specific COs as shutdown or excepted personnel in accordance with direction provided by their Senior Resource Officials (SROs).

- C) Non-shutdown and non-excepted personnel - Non-shutdown and non-excepted personnel are those individuals not performing shutdown or excepted activities who will be dismissed no later than 12:00 p.m. on the first workday of a fiscal year absent an appropriation or a continuing resolution.
- D) Shutdown and excepted activities - The Office of Management and Budget (OMB) has indicated that in the event of a shutdown for an appropriation hiatus, agencies may only perform certain activities: (1) shutdown activities (i.e., those necessary for the orderly shutdown of non-excepted activities of the Agency) and (2) excepted activities (i.e., those necessary to ensure against an imminent threat to public health and safety, or the protection of property). **Under the authority of the Anti-Deficiency Act, COs and Purchase Card holders may obligate the Government for shutdown and excepted activities even in the absence of an appropriation.** However, contractors cannot be paid for these activities until an appropriation or continuing resolution has been enacted.
- E) Inventory of excepted activities - The Director, OAM, will request the submission of an inventory of contracts from the SROs which cite excepted activities when the Agency is faced with an appropriation hiatus. In addition to identifying the excepted activities, the SROs should provide associated rationale in sufficient detail to make it clear why the activities are necessary to protect against an imminent threat to public health and safety, or the protection of property. The inventory will be requested and submission required with as much advance notice as is possible.

Examples of excepted activities relevant to the Agency cited in the OMB guidance include:

- Activities essential to ensure against an imminent threat to public health and safety, including safe use of food and drugs, and safe use of hazardous materials;
- Protection of Federal lands, buildings, waterways, equipment and other property owned by the Government;
 - Law enforcement and criminal investigation;
 - Emergency and disaster assistance;
- Activities necessary to maintain protection of research property, including data;

Example EPA has determined to be within the OMB guidelines as shutdown activities include:

- Payroll support, such as for data entry for the last pay period covered by an appropriation.

Examples EPA has determined to be within the OMB guidelines as excepted activities include:

- Security guard services.
- Care and feeding of laboratory animals.
- Maintenance of computers necessary to prevent failure or loss of data.

Note: A brief delay in performing routine maintenance of Government property does not constitute an "emergency" for the purposes of identifying excepted activities. Failure to properly maintain Government property may "compromise to some degree" the safety of human life or the protection of property, but is not considered an imminent emergency. Therefore, performing routine maintenance would not be considered an excepted activity.

42.4.5 POLICY

42.4.5.1 Shutdowns for Appropriation Hiatuses

When the Agency is shut down for an appropriation hiatus, COs will need to notify contractors as part of the shutdown activities to stop work on other than excepted activities on existing contracts. Additionally, COs may issue new work, such as work assignments and delivery orders, as well as exercise options for excepted activities listed in the inventory of excepted activities.

- A) On-site contractors. COs must issue stop work orders to contractors performing any work in Government facilities if the work has not been determined to be an excepted activity. The stop-work order should be structured to allow performance of excepted activities, if such activities are part of the statement of work. COs will instruct contractors to immediately take all reasonable steps to minimize the incurrence of costs allocable to the work covered in the stop-work order during the period of work stoppage. Appendix 42.4A provides a sample of a stop-work order.
- B) Off-site contractors. Off-site contractors may continue to perform excepted activities. Although contractors may legally continue to perform non-excepted activities under existing contracts for which the work has been fully funded and is non-severable, senior Agency managers may determine that the inability of the Agency to monitor contractor performance necessitates inclusion of these activities in the stop-work order. If this decision is made, COs must issue stop-work orders for non-excepted activities.

C) Cancellation of stop-work orders. Once the appropriation hiatus is over, and an appropriation or continuing resolution has been passed by the Congress and signed by the President, and after written notification has been received from program officials, COs must issue cancellations of stop-work orders. Appendix 42.4B provides a sample of a cancellation of a stop-work order.

42.4.5.2 Procedures for Shutdowns for Appropriation Hiatuses

The lists of excepted activities will be distributed as soon as practicable to the OAM division directors and the regional CO supervisors, who will distribute them to the appropriate CO.

The CO will review the activities on the list and associated rationale prior to preparation of any stop-work orders for non-excepted activities. Activities which do not appear to comply with the established OMB and Agency guidelines should be discussed with the program office.

In accordance with FAR 42.1303(b), stop-work orders must be reviewed and approved at one level above the CO prior to issuance. The list of excepted activities will be part of the file documentation reviewed and approved by the level above the CO prior to the CO's issuance of the stop-work order.

Stop-work orders transmitted to contractors who are to perform excepted activities will instruct them to provide to the COs, within 24 hours of receipt of the stop-work orders, the names of individuals who will be performing any excepted activities on-site. The CO should then, within 24 hours of receipt of the list of individuals to perform excepted activities, provide this list to the facilities manager responsible for security for the location. Individuals whose names are not on the list will not be granted access to the EPA facility.

In order to ensure that contractors are not refused access to EPA facilities when they are needed to perform excepted activities, COs may wish to telephone contractors and notify them of the excepted activities to be performed. The CO should then request the list of names be sent via facsimile, within 24 hours of the oral request, prior to issuance of any stop-work orders.

The contract document (e.g., option, modification, work assignment, delivery order, contract.) tasking the contractor with performance of excepted activities should clearly indicate the action is being taken "subject to the Anti-Deficiency Act exception for emergencies involving the safety of human life, or the protection of property, where the threat can be reasonably said to be near at hand and demanding of immediate response (excepted activities)."

42.4.5.3 Settlement of Requests for Equitable Adjustment for Stop-Work Orders

- A) General. Before settling any claim or request for an equitable adjustment, the CO must ascertain the rationale for the dollar amount or any other adjustments requested, and have adequate supporting data to determine that the request accurately reflects a reasonable adjustment to the contract. COs will need to be familiar with the contract's terms and conditions; the contractor's internal employee policies for vacation, leave, and time and attendance; and the contractor's disclosure statement.
- B) Certification of Claims. A Claim@ is a written demand or assertion, seeking as a matter of right, the payment of money in a sum certain, which is submitted to the CO for decision (i.e., either explicitly or implicitly requesting a final decision). Consequently, a request for an equitable adjustment that meets these criteria is also a Claim, @ regardless of whether or not it is in dispute. In accordance with FAR 33.207, all claims seeking in excess of \$100,000 must be certified by any person duly authorized to bind the contractor with respect to the claim to be a claim in accordance with the Contracts Disputes Act (CDA).

Note, however, that a request for an equitable adjustment may not necessarily have to be processed as a claim, in accordance with the CDA time frames, unless negotiations for settlement of the requests for equitable adjustment break down, the resolution of the request for equitable adjustment is in dispute, the contractor requests a CO's final decision, the request for equitable adjustment is certified, and all three elements of a claim exist, i.e., 1) a written demand or assertion, seeking as a matter of right, 2) the payment of money in a sum certain, which is 3) submitted to the CO for decision.

42.4.5.4 Procedures for Requests for Equitable Adjustment for Stop-Work Orders

- A) General. When the Agency has multiple contracts with the same contractor, COs should coordinate their positions for settlement to ensure consistency in responses, when appropriate.

To facilitate this interaction, COs will submit copies of all claims received to the Financial Analysis and Oversight Service Center (FAOSC) who will compile a log of claims received. FAOSC will provide copies of this log to all COs who received claims to ensure coordination and consistency in settlement of claims as appropriate. FAOSC and the Office of General Counsel (OGC) will also act as consultants on relevant cost issues related to the settlement of the claims.

- B) Cost Minimization. COs should review any claims to ensure that contractors exercised diligence in minimizing the incurrence of any costs during shutdown and start-up.

C) Claims for Reimbursement of Shutdown Costs. No claims for reimbursement for the period of a shutdown shall be submitted by contractors until COs have instructed the contractor to submit them. The costs to be reimbursed will be determined after COs have negotiated any equitable adjustments and issued any required modifications. COs shall instruct the contractor to submit separate invoice(s) identifying that the costs represent the costs associated with the shutdown.

D) Previously Invoiced Costs. COs should verify with contractors whether any costs associated with complying with the stop-work order have been already invoiced and/or reimbursed. COs may wish to review the contractors' invoices and progress reports to identify any such costs.

If any costs have been included in prior invoices, COs should require the contractor to identify these costs separately in any supporting documentation for requests for equitable adjustments. This will avoid the inclusion of costs in any subsequent settlement modification that have already been invoiced and reimbursed (i.e., avoid double counting of these costs). If the reimbursed amount is determined to be excessive, the CO should take steps to ensure that any overpayment be taken as an off-set against future invoices.

E) Time Extensions. When COs evaluate requests for time extensions, they must determine whether the request is needed as a result of the stop-work order(s), to avoid providing extensions for delinquencies that were within the control of the contractor. Extensions for expiring contracts, work assignments, and delivery orders that are needed to complete required work delayed due to the stop-work order, would be made under the authority of the contract's AStop Work Order@ or ASuspension of Work@ clauses. A Justification for Other than Full and Open Competition would not be required in such a case.

F) Price Adjustments. COs should review requests for equitable adjustments and make price adjustments when appropriate.

G) Indirect Cost Rates. Prior to raising indirect cost rates and other contractual ceilings, Costs should evaluate the impact of the stop-work order against any off-setting reductions. Such reductions would include new contract awards anticipated or received, and cost-saving measures available to the contractor. COs should also be aware of other reasons, such as inefficiencies on the contractors' part, that would cause the indirect cost rate to increase.

COs are cautioned to review supporting documentation carefully prior to making any adjustments. COs should notify contractors that they plan to refer any indirect cost rate adjustments to the FAOSC for resolution as part of their normal procedures for calendar year submissions.

For those contracts that are not subject to this process, such as contracts with fixed rates, COs may wish to consult with the FAOSC or other Agency cost analysts for assistance in reviewing this data.

H) Treatment of Individual Costs. The following general guidance is provided for certain categories of costs. Once a CO has determined that a cost is allowable, allocable, and reasonable and should be included as part of a reasonable adjustment to the contract, the CO must refer to the contract's terms and conditions, the contractor's internal employee policies, and the contractor's disclosure statement to determine whether the cost can be reimbursed as a direct cost or indirect cost.

1) Costs that could be considered allowable (some as direct costs, others as only indirect costs.)

- Costs associated with securing the facility.
- Costs resulting from redirecting contractor's employees not otherwise directly billable to an EPA or other Federal contract.
- Costs resulting from placing contractor's employees on vacation or other leave status.
- Costs resulting from placing contractor's employees on layoff status and incurring unemployment expenses.
- Costs associated with protecting against damage to Government property, including computer databases, Government-furnished equipment, security, and research assets. The protection must be against an imminent threat, and not be considered routine maintenance.
- Costs for on-going fixed infrastructure costs, such as utilities, telephones, rent, etc. However, those costs that would be incurred based on usage should have been stopped, such as cellular telephones. Unless used to perform shutdown or excepted activities, such costs should not have been incurred and, therefore, should not be reimbursable.
- Costs resulting from idle equipment used exclusively on the EPA project that cannot be used elsewhere, and for which costs cannot be mitigated, such as where continued rental is more appropriate and cost effective than return and re-rental.

- For other than cost-reimbursable contracts, indirect costs derived using the Eichleay formula to recover fixed overhead costs resulting from damages to contractors for idle labor that could not otherwise be reassigned to EPA or another contract.

Under cost-reimbursable contracts, indirect costs that would have been associated with direct labor costs that were anticipated, but not incurred, will generally be absorbed by appropriate adjustment of indirect cost rates to reflect the allocation base (the reduced Alabor dollar@ volume across which the indirect pools are spread). Thus, there being no Aloss,@ application of the Eichleay formula to a term form or completion form cost-reimbursement contract is unwarranted. (See Appendix 42.4C for a further discussion of the Eichleay formula.)

COs adjusting contract prices for unabsorbed fixed overhead costs should instruct the contractor to credit appropriate pools for the adjustment and notify the cognizant financial administrative CO, other COs with contracts with the contractor, and contract auditors so that the credit can be verified.

2) Costs that would normally not be considered allowable as a direct cost under the contract.

- Costs for conversion of contractor employee vacation or other leave time to direct labor.
- Costs of direct labor based on company requirements to pay in full Federal Labor Standards Act (FLSA) exempt personnel (those employees who are not reimbursed on an hourly or less than full-time basis) who could not otherwise be reassigned as a direct charge.

In accordance with 29 CFR 541.118(a), 541.212(a), and 541.312(a), in order for employees to retain their status as FLSA-exempt, the FLSA requires employers to pay FLSA-exempt personnel their full salary for any week in which they perform any work, without regard to the number of days or hours worked. Additionally, the FLSA states that the employer need not pay exempt personnel for any workweek in which they perform no work. Exempt personnel are not reimbursed on an hourly basis, nor do they have an adjustment in their pay made for time-off from assigned work.

If a stop-work order was issued during a week in which some work had already been performed by a contractor's FLSA exempt employees, contractors are required to pay these employees their full salary for the week. If the contractor cannot reassign these FLSA-exempt employees to other cost

objectives, the contractor may need to pay these employees for idle time. Reimbursement to contractors for charges to EPA for such costs should be made in accordance with the terms of the contract, the FAR, and the contractor's accounting system. Such idle time is typically reimbursed through the contractor's indirect cost rates.

- Costs of direct labor for idle time of employees who were not reassigned, simply because there was no alternative work at their physical location. Contractors should use their best business judgment to minimize expenses. If temporary reassignment was impossible, direct labor costs may not normally be paid. Any decision to reimburse contractors that do not perform labor, i.e., idle time as a direct charge must be approved by the Director, Policy, Training, and Oversight Division.
- Costs of maintaining idle equipment for which the contractor has taken no steps to minimize costs.
- Direct labor for training, even if EPA-specific training.
- Direct labor for performance of maintenance and improvements to the contractor's facility, even if EPA-specific.
- Costs of direct labor as "lost income." If the Government has no requirement that the lost time be made up, the contractor may not realize the loss in the future as either straight time or overtime.

42.4.5.5 Reimbursement of Contractor Costs for Agency Closures for Other than Appropriate Hiatuses

When the Agency or any part thereof is closed as a result of factors such as weather conditions, natural disasters, Executive Orders, building hazards, or public safety, COs will not need to stop work on contracts, but will need to advise contractors regarding payment of labor charges.

A) On-site contractors. Generally, for contract performance at Government facilities, the Agency will not reimburse contractors for labor costs as a direct charge during the closure if the contractor does not perform. If contract services can and are performed at a different location, contractors may be reimbursed for direct labor as direct charges. Contractors should be instructed that they will not normally be reimbursed as a direct charge for labor costs for on-site employees who were unable to perform any work as a result of the closure. These costs must be accounted for in accordance with any corporate policies they may have (e.g., temporary reassignment to other projects, administrative or other leave).

B) Off-site contractors. Contractors working off-site of Government facilities will perform and

charge labor under their contracts in the same manner as any other work day. Closure of EPA facilities will not impact off-site performance charges to contracts. If contractors elect to close at their own discretion and do not perform, they may not charge the cost of labor for employees under Agency contracts as a direct charge.

APPENDIX 42.4A SAMPLE STOP-WORK ORDER**Contractor's Point of Contact****Title****Contractor Name****Contractor Address**

RE: Contract Number: **(insert contract number)**

Dear **Contractor's Point of Contact**:

In accordance with **Section F.1 of the subject contract, FAR Clause 52.242-15, STOPWORK ORDER ALTERNATE I, (or other appropriate contract reference)**, I am issuing the following stop-work order which will be effective **(CO to insert the date of the first day that the Environmental Protection Agency is without an appropriation bill or continuing resolution for fiscal year (i.e., the stop-time, local time, day, and date). Name of contractor** is hereby directed to stop work in its entirety until notified otherwise, but in no event longer than 90 calendar days **(or other appropriate contract reference for the Government's unilateral stop-work authority)** on the following:

All work associated with this contract except the following excepted activities: (None, or itemize by work assignment, delivery order or task, with narrative description of the specific work exempted from the work stoppage. This will be completed by the CO based on whether there are excepted activities to be performed.)

If the excepted activities are performed at an EPA facility, **name of contractor** shall provide me, **name of CO**, within 24 hours of receipt of this letter, with a list of the names of contractor employees who will be performing this work on-site, and will require access to the EPA facility. Individuals whose names are not on the list will not be granted access to the EPA facility.

Name of contractor, therefore, shall immediately take all reasonable steps to minimize the incurrence of costs allocable to the work covered herein during the period of work stoppage.

Within a period of 90 days or any extension to this period for which we have agreed, the Government shall either:

- A) Cancel the stop-work order; or
- B) Terminate the work covered as provided in the termination clause of this contract.

If EPA should cancel the stop-work order or the period of the order or any extension thereof expires, **name of contractor** shall resume work.

No claims for reimbursement for the period of a shutdown shall be submitted until I have instructed you to submit them.

If you have any questions regarding this stop-work order, please contact me at **CO's telephone number**.

Sincerely,

CO's name
CO

APPENDIX 42.4B SAMPLE CANCELLATION OF STOP-WORK ORDER**Contractor's Point of Contact****Title****Contractor Name****Contractor Address**Dear **Contractor's Point of Contact**:

In accordance with **F.1, FAR Clause 52.212-13, STOP-WORK ORDER ALTERNATE I, (or other appropriate contract reference)** under Contract Number **(insert contract number)**, I am canceling the stop-work order which was effective **(insert effective date in stop-work letter)**. **Name of Contractor** is hereby directed to resume work in its entirety as of **(insert effective date for resumption of work)**.

Under the terms of the "Stop Work" clause of your contract, your organization may assert its right to an equitable adjustment within thirty (30) calendar days after resumption of work. Accordingly, **name of contractor** should submit any request for equitable adjustment to **name of servicing CO** at **(address of CO)**.

No claims for reimbursement for the period of a shutdown shall be submitted until I have instructed you to submit them.

If you have any questions regarding the cancellation of this stop-work order, please contact me at **CO's telephone number**.

Sincerely,

CO's Name**CO**

APPENDIX 42.4C USE OF THE EICHLEAY FORMULA FOR OTHER THAN COST-REIMBURSABLE CONTRACTS

The use of the Eichleay formula is a legally permissible method of computing unabsorbed home office costs resulting from Government-caused delay. In fact, the Eichleay formula is the exclusive means for compensating a contractor for unabsorbed home office cost cases arising out of construction contracts. It has also been applied to the recovery of unabsorbed home office costs on manufacturing/supply contracts. The following two prerequisites are required for application of the Eichleay formula:

First, there must be a compensable delay@ (i.e., the Government must have caused a compensable delay or disruption in the contractor's performance).

Second, the contractor must have been on Astandby@ during the delay. Note that the standby test focuses not on the idleness of the contractor's work force (either assigned to the contract or total workforce), but on suspension of work on the contract. Once the contractor has established Astandby@ status, the burden of proof shifts to the Government to establish that the contractor did not suffer or should not have suffered any loss because it was able to either reduce its overhead or take on other work during the delay.

The Eichleay formula requires three steps:

- 1) To compute the total fixed overhead allocable to a contract, multiply the total home office costs incurred during the contract period times the ratio of billings from the delayed contract to total billings of the firm during the contract period;
- 2) To compute the daily contract fixed overhead rate, divide the fixed overhead expenses allocable to the contract by the actual contract performance period. The actual performance period, which is expressed in number of days, includes the delay period; and
- 3) To compute the amount recoverable, multiply the daily contract fixed overhead rate (Step 2) by the number of government caused delay days.

If the above prerequisites have been met, the burden then shifts to the Government to show that the contractor did not suffer or should not have suffered any loss, because it was able to either reduce its home office costs or take on other work during the delay. If the Government cannot meet this burden and the aforementioned steps have been established, a contractor may only recover unabsorbed home office costs using the Eichleay formula as the basis for its calculation of the amount of such home office costs.

In many cases, it may be premature for contractors to claim a loss since employees could have been diverted to other contracts, contract performance subsequent to the shut-down period may enable them to recoup these costs, and contractors may have been able to reduce their home office costs, or to take on other work during the delay.

Use of the Eichleay formula is a very complex area in contract law. COs with questions, regarding whether the prerequisites for use of the Eichleay formula have been met prior to application of the formula, should contact the Office of General Counsel (OGC). For CO questions regarding application of the formula, COs should contact the contractor's cognizant audit agency. For additional information about the Eichleay formula, COs may also wish to refer to Chapter 8, Pricing of Adjustments, Administration of Government Contracts, Third Edition by John Cibinic, Jr. and Ralph C. Nash, Jr. or Section 12.804 of the July 1997 Defense Contract Audit Agency Manual.

Section 42.5 Guidance for Use of Program Office Interface (POI)

42.5.1 PURPOSE

The purpose of this section is to establish policy and guidance for permitting or requiring Contractor use of the Office of Acquisition Management's (OAM) Program Office Interface (POI) to administer EPA contracts. Currently, POI has the capability to be used only with contracts that either use work assignments (WAs) or technical direction documents (TDDs), but not both within the same contract. The ultimate goal for POI, however, is to accommodate any and all types of contracts.

42.5.2 BACKGROUND

POI is an automated system developed in Lotus Notes for the electronic management of workflow between Project Officers, Contracting Officers, Work Assignment Managers, and the contractor on EPA contracts for actions, including the creation and maintenance of various contractual tasking, funding, tracking, and invoicing documents and other related documents. POI was initially developed by EPA for the Superfund Technical Assessment and Response Team (START) contracts and piloted in a few select Regional offices. The first production release of POI was available to users on February 11, 2002, and the latest Production 1.03 version was released on March 4, 2002.

An interface between POI and OAM's Integrated Contracts Management System (ICMS) is partially completed and continues to undergo development. POI is now capable of supporting all contracts that use either Work Assignments (WAs) or Technical Direction Documents (TDDs) as tasking vehicles and is in use in all Regions. In the future, POI will be enhanced to support broader uses and deployment with other types of EPA contracts including Task Order and Delivery Order contracts. POI uses Lotus Notes' electronic signature functionality and has been approved for such use with a limited number of contract type actions and technical directives between EPA and its contractors. See Contracts Management Manual Chapter 52, Section 52.1, Use of Electronic Signatures between EPA and Contractors, for details on the approval process and a listing of the types of contract actions that are approved for the use of electronic signatures.

This section was originally issued as Procurement Policy Notice (PPN) 02-01 on April 8, 2001. from Judy S. Davis to Senior Resource Officials, OAM Division Directors, Regional Contracting Officer Supervisors and the Office of General Counsel.

42.5.3 AUTHORITY/APPLICABILITY *(Reserved)*

42.5.4 DEFINITIONS *(Reserved)* **42.5.5 POLICY**

42.5.5.1 Voluntary vs. Mandatory Use of POI

POI is a management tool designed to assist contracting officials, program officials, and contractors in the day-to-day management of EPA contracts. The use of POI is voluntary and, to date, no decision has been made on whether the use of POI will become mandatory in the future. Nevertheless, some offices have chosen to require contractors to use POI for their particular contracts. This practice is acceptable when determined by the CO and program office that it is in the overall best interests of all parties. However, when the use of POI is mandated for a particular contract, in accordance with Part 45 of the Federal Acquisition Regulation (FAR), and Agency policy on Government property, contractors are required to provide the IT hardware necessary to comply with the original or revised contract requirements. See Section 42.5.5.7 and Acquisition Handbook, Part 31, Section 2, Charging Government Contracts for Contractor Provided Property, for a discussion of options and considerations on how to treat hardware necessary for POI.

Although the flexibility of POI permits its users to interact in a variety of ways, only two are recommended.

- A) Interaction between the contracting office and the program office only, or
- B) Interaction between the Government (both the contracting office and the program office) and the contractor.

The choice of whether, and to what extent, to use POI rests with its ultimate users for each contract. Contracting officers are encouraged to discuss the potential use and benefits of POI with their program offices to determine if the use of POI is advantageous for their particular contract. Discussions are encouraged for new contract awards, as well as for existing contracts.

42.5.5.2 Considerations to Require Contractor's Use of POI

Several factors should be taken into consideration when requiring contractors to use POI for any particular contract. Each contract should be examined on its own merits to determine if it's appropriate and reasonable to use POI or not. Factors to consider in evaluating whether to use POI include, but are not limited to:

- A) Contract Value. Because POI has certain hardware and software requirements, the value of the contract and/or the expected future use of the equipment should be of a sufficient level to anticipate a savings benefit greater than the anticipated expenditure for the necessary hardware and software.
- B) Contract Period. The contract should be of sufficient length to warrant anticipated benefits as a result of using POI.

C) Small vs. Large Business. Consideration should be given as to whether the contract is with a small business. Small businesses could have fewer resources available to take full advantage of the use of POI and may not expect future use of the equipment necessary to run POI. Nevertheless, consideration should also be given that a POI requirement may represent an opportunity for a small business concern to make capital investments and to grow their business.

D) Value and Benefits. Determine if the anticipated return will be of sufficient overall value and benefit to users. In addition to hardware and software requirements which must be met, there could be other expenses for installation, support, maintenance, and ongoing training. Contractors holding multiple EPA contracts could potentially achieve greater economies of scale by using one computer installation to support all their contracts. As such, we expect contractors will realize greater benefits and value, and pass resulting savings on to the Agency, as they use POI on more and more contracts. Overall, the value and benefits for using POI should be greater than the initial and ongoing expenses required to implement and maintain the use of POI.

42.5.5.3 How to Initiate the Use of POI

To initiate the use of POI for a particular contract, the step-by-step process described in the Information Technology Service Center's (ITSC's) document titled APROCEDURES FOR PROVIDING CONTRACTOR ACCESS TO EPA's PROGRAM OFFICE INTERFACE (POI) should be followed. A copy of the document can be found in Attachment (1) and on OAM's Web Page at: <http://www.epa.gov/oam/ptod/poi.pdf>.

42.5.5.4 POI Hardware & Software Requirements

Currently, POI requires specific hardware and software to function and to exchange information. The following POI specifications and requirements may be provided to contractors that are required to use or are considering whether to use POI. The contractor must have a Lotus Notes platform consisting of at least one server and one personal computer (PC) operating in a client/server environment, and must be able to communicate electronically with EPA's Lotus Notes external access server.

The following recommended specifications are provided to assist in making a determination as to whether to use POI, and further, whether to extend mandatory use to Agency contractors. Please note that systems with less capability than the recommended specifications below may permit POI utilization.

42.5.5.5 POI Server System Specification

The recommended server system configurations for POI are summarized below. The server is the device that communicates with EPA's network.

System	Recommended
Processor	Multiple Intel Pentium III 800 MHz or equivalent
RAM	1 GB
Operating System	Windows NT 4.0
Applications	Lotus Notes Domino 5.0.6a

POI Server System Specification

42.5.5.6 Client System Specification

The recommended client system configurations for POI are summarized below. The client is the users desktop PC.

System	Recommended
Processor	Intel Pentium III 600 MHz or equivalent
RAM	128 MB
Operating System	Windows 98 level 2
Applications	Lotus Notes Client 5.0.6a

POI Client System Specification

Specific information on computer options are available at the following Lotus Notes web site:

<http://www.notes.net/notesua.nsf/e18d5eb0b8be97d9852567e50052ad16/b3f2880a63cffd80852569d9005c7ef5?OpenDocument>.

42.5.5.7 Property Considerations

POI is a software program and software is not classified as tangible property. As such, it

is not subject to FAR Part 45. Additionally, POI was developed by EPA and licensing restrictions do not apply. Therefore, POI may be provided to contractors for use with EPA contracts. However, contractors' use of POI is limited to their EPA contracts.

The hardware required to operate POI is subject to the restrictions in FAR Part 45. The Government will pay reasonable costs for the use of the equipment necessary to operate the system in accordance with the contractor's established accounting practices. Even if the CO requires the contractor to use POI, the acquisition cost of the property should not be reimbursed as a direct charge because such action would result in EPA acquiring ownership. Please see Acquisition Handbook, Part 31, Section 2, Charging Government Contracts for Contractor Provided Property, for more details on appropriate methods of reimbursing contractors for use of property under Agency contracts.

APPENDIX 42.5A**PROCEDURES FOR PROVIDING
CONTRACTOR ACCESS TO EPA's
PROGRAM OFFICE INTERFACE (POI)****BACKGROUND:**

The goal of POI is to support the Agency's essential mission elements by automating the preparation of documents required for contract management, maintaining electronic files of the Program Office's contract related documents and transferring information electronically between POI and OAM's Integrated Contracts Management System (ICMS). POI and ICMS form a major component of EPA's Electronic Commerce solution through streamlining the buying and contract management processes.

POI is a Lotus Notes application developed by EPA, and has been used as a pilot program at EPA regional offices. The first production release of POI was on February 11, 2002. The system provides secure electronic signature capability for internal review and approval of documents required in the administration of Agency contracts. In accordance with Contracts Management Manual, Chapter 52, Section 1 addressing Electronic Signatures, specified tasking documents can be sent electronically, through POI, from EPA to designated contractors, via the Agency's Lotus Notes external access server.

This document describes the procedures for obtaining access to POI for EPA contractors and agreeing to the use of electronic signatures for specified contract related documents. EPA contractors may be granted access to the EPA Lotus Notes external access server for the purpose of retrieving and submitting specified documents through the EPA's POI application. For contractors holding more than one active contract with EPA, the documentation described herein must be submitted for each contract.

PROCEDURE FOR OBTAINING CONTRACTOR'S ACCESS TO POI

Access to POI CANNOT be approved for any contractor prior to submission and approval of a completed form, as described below.

Contractors must complete a CROSS-CERTIFICATION APPROVAL FORM (See Attachment 42.5 D-1). This document requires the name of the contractor's server that will communicate with EPA's external access server, the beginning and ending dates for the requested access (usually, the beginning date is today's date or a date in the near future, and the ending date is the current contract end date), the name of the company (<<Contractor's firm>>), the Contract number and Contractor's point of contact. In addition, the document must be routed through and signed by various EPA officials before the request can be processed.

The Contracting Officer's (CO) signature indicates approval of the signed document, which can then be communicated electronically to the contractor in accordance with this policy. The Information Technology Service Center Manager's (ITSC Manager) signature indicates approval of the Region/Program Office's request. The Information Security Officer's (ISO) signature indicates awareness of the request and agreement with the use of electronic communications between EPA and the contractor, as described in this document and CMM Chapter 52, Section 1.

The form is filled in by the Regional/Program Office, including information supplied by the contractor. After appropriate signatures have been added, the form must be submitted to OAM's ITSC Manager. Send the completed form to: POI Systems Administrator, OAM Information Technology Service Center, EPA HQ Mail Code 3801R, or fax it to the attention of the Information Technology Service Center Manager at 202-565-2473. When the form has been signed by the ITSC Manager, it will be forwarded to EPA's National Notes Administrator for final approval. If the request to use EPA's Lotus Notes external access server will NOT involve using electronic signatures, no further steps are necessary.

PROCEDURE FOR USING ELECTRONIC SIGNATURES IN POI

As required in CMM Chapter 52, Section 1 addressing Electronic Signatures, the contract document must either already include, or be modified to add, a provision which states that the contractor will accept electronic signatures for certain contract related documents using the EPA Program Office Interface and the Agency's Lotus Notes external access server. (See URL <<http://www.epa.gov/oam/ptod/>> for suggested wording for this contract clause and a list of types of documents that may be signed and exchanged electronically.)

ATTACHMENT 42.5 D-1**5.4.6.1 Cross-Certification Approval Form**

"Issued By" Certificate Name: EPAHUBX/USEPAX/US _____ (EPA's
Lotus Notes External Access Server)

"Issued To" Certificate Name:
(Contractor's server name)

Cross Certification Initiation Date: _____ (Today's date or date access is needed.)

Cross Certification Termination Date: _____ (current contract end date)

Purpose of Cross Certificate:

To access specified and approved contract data through EPA's Program Office Interface (POI). The POI databases are: POIPOST.nsf and POIDISC.nsf.

Statement regarding the trustworthiness of the other organization (as required):

(Contractor's firm) _____ is an EPA contractor under Contract Number _____.
(Contractor's firm) _____ is authorized to receive specified documents made available through EPA's
Program Office Interface (POI).

Contractor Point of Contact (Requestor):

1. **Contracting Officer**

I approve of the cross certification request described above.

Signature

Printed Name

Date

B) **Information Security Officer (Region or Program Office)**

I am aware of the request to cross certify the contractor's server for the electronic exchange of information between EPA and the contractor through the Agency's external access server.

Signature

Printed Name

Date

3. **Information Technology Service Center Manager (Office of Acquisition Management)**

Signature

Printed Name

Date

NOTE: When this form is completed and all signatures affixed, courtesy copies will

be sent to the Region or Program Office IT Coordinator and Lotus Notes Administrator.

DOCUMENT OBSOLETE